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09/896,365	06/29/2001	Frederick Morello	491328-600-006	2229

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

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Please find below and/or attached an Office communication concerning this application or proceeding.



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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/896,365
Filing Date: June 29, 2001
Appellant(s): MORELLO ET AL.

MAILED
FEB 09 2005
GROUP 3600

Russell O. Paige
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/21/04.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-20 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

4,962,622	ALBRECHT et al.	10-1990
6,282,936	BLAZLEY	9-2001

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

Claims 1-3,14,15-17 and 20 stand rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #4,962,633 to ALBRECHT et al. Regarding claims 1 and 15, ALBRECHT et al. discloses the use of panel member including a curved central portion (172) having a pair of side walls (170) extending therefrom wherein the side walls end in a pair of complementary wings (W), see the marked attachment from the previous Official Action. Regarding claims 2,3,16 and 17, the curved portion (172) is concave and resembles an arc. In reference to claims 14, 20, and in further regards to claim 15, the wings (W) of ALBRECHT et al. are disposed on opposing sides of the curved central portion (172) and includes a hook portion (HO) on one side and a hem portion (HE) on the other side, see the marked attachment from the previous Official Action.

Claims 1-3,8,9,14,15-17,19 and 20 stand rejected under 35 U.S.C. 102(b) as being anticipated by US #6,282,936 to BLAZLEY. Regarding claims 1 and 15, BLAZLEY discloses the use of panel member including a curved central portion (C) having a pair of side walls (S) extending therefrom wherein the side walls end in a pair of complementary wings (70,71), see the marked attachment. Regarding claims 2,3,16 and 17, the curved portion (C) is concave and resembles an arc. In reference to claims 8,9 and 19, BLAZLEY discloses that the depth of his arc is 300mm which converts to

Art Unit: 3635

11.8 1 inches. Hence, the length of the arc of BLAZLEY falls within the requirements of the claims 8,9 and 19. Regarding claims 14, 20, and in further regards to claim 15, the wings (70,71) of BLAZLEY are disposed on opposing sides of the curved central portion (C) and include a hook portion (75) on one side and a hem portion (73) on the other side such that a wing portion of one side of the panel is connected to another wing portion on a second side of an adjacent panel.

Claim Rejections - 35 USC § 103

Claims 4-11,18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,962,622 to ALBRECHT et al. As detailed above, ALBRECHT et al. discloses the basic claimed device except for the specifics of arc dimensions in degrees and inches. In reference to claims 4-7 and 18, although ALBRECHT et al. does not disclose specific details of the radius of his arc, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the radius of the arc constitutes the depth of the arc which in turn determines the actual rigidity and strength of the arc itself. Thus, the radius of the arc is an obvious matter of design choice determined by the required or desired amount of rigidity needed for how the panel is intended to be used. For instance, the wider the radius, the arc has less depth and therefor has less rigidity. On the other hand, the smaller the radius, the more the depth of the arc and therefore the more rigid the panel will be. Regarding claims 8-11 and 19, the length of the radius is also determined by the use of the panel and the desired rigidity the panel is required to be. Hence, the length of the radius is also an obvious matter of design choice. The applicant has disclosed a wide range of degrees

Art Unit: 3635

for arc radiuses and lengths; however, the applicant has not provided any criticality over any one particularly claimed angle or length. Thus, the selection of the angle would have been an obvious matter of design choice depending upon the environment of which the device is intended to be used. Although ALBRECHT et al. is silent in this regard, the length of the arc dictates the radius of the arc, which in turn determines the rigidity of that portion of the panel.

Claims 4-7,10,11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #6282,936 to BLAZLEY. As detailed above, BLAZLEY discloses the basic claimed device except for the specifics of arc dimensions in degrees and particular inches. In reference to claims 4-7 and 18, although BLAZLEY does not disclose specific details of the radius of his arc, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the radius of the arc constitutes the depth of the arc which in turn determines the actual rigidity and strength of the arc itself. Thus, the radius of the arc is an obvious matter of design choice determined by the required or desired amount of rigidity needed for how the panel is intended to be used. For instance, the wider the radius, the arc has less depth and therefor has less rigidity. On the other hand, the smaller the radius, the more the depth of the arc and therefore the more rigid the panel will be. Regarding claims 8-11 and 19, the length of the radius is also determined by how the panel will be used and how rigid the panel is required to be. As previously mentioned, the depth of the arc of BLAZLEY is 300mm, which is converted to 11.81 inches. BLAZLEY does not disclose the particular dimensions of 6 inches or 5-8 inches. Although BLAZLEY does not

Art Unit: 3635

disclosed the claimed arc lengths, the length of the radius is also an obvious matter of design choice. The applicant has disclosed a wide range of degrees of arc radiuses and lengths; however, the applicant has not provided any criticality over any one particularly claimed angle or length. Thus, the selection of the angle would have been an obvious matter of design choice depending upon the environment of which the device is being used. The length of the arc dictates the radius of the arc, which in turn determines the rigidity of that portion of the panel.

(11) Response to Argument

In response to the applicant's argument that the examiner has not examined the claims in light of the specification do to the fact that applicant's invention specifically states that his panel "surpasses a building panel having a straight central portion that includes a notched stiffener", the applicant is reminded that although claims are interpreted in light of the specification, the claims also have to be interpreted in broadest since. The claim does not detail or explicitly state that the central region **cannot** be a notched stiffener. Nor does the claim give any dimensional specificity to the details of the central region that would read over the cited art of reference. In the *broadest* since, both BLAZLEY and ALBRECHT et al. clearly disclose a building panel with a curved central portion, a pair of side walls extending at opposing ends thereof, and a pair of complementary wings extending from the side walls.

Regarding the applicant's contention that the ordinary and customary definition of a "side wall" being that the side wall "must" exclude coplanar surfaces and the examiner's interpretation, the examiner is unaware of such a definition. As provided in

Art Unit: 3635

the marked attachment, a *side wall* is defined as a *wall* that forms *the side* of a structure. There is no mention of the exclusion of coplanar surfaces. Clearly, the side walls (170) of ALBRECHT et al. and (S) of BLAZLEY, as identified by the examiner, are *walls* either to the side of the curved structure (172) in ALBRECHT et al. or *walls* to the side of curved portion (C) in BLAZLEY. The examiner is not aware of any definition in the art excluding coplanar surfaces or segments of the flat regions as indicated by the examiner in her action. Surely, regions or surfaces horizontally, vertically, or even angularly to a *structure* are included in the art recognized definition of a *side wall*.

In reference to the applicant's argument that ALBRECHT et al., as a single reference, does not disclose all of the elements of the claim's essential elements, as clearly noted above, both ALBRECHT et al. and BLAZLEY detail each an every element of the claimed invention. With specific regard to the side walls of ALBRECHT et al. not extending from opposite ends of the central curved portion, again and interpreted broadly, the side walls (170) of ALBRECHT et al. extend from the opposite ends of the central curved portion (172). Although ALBRECHT et al. details a flat/crest portion (170) and a stretched-in stiffening rib (172) the applicant is arguing semantics. Conceivably and obvious to a person skilled in the art, the crest or flat region clearly is related to the meaning of a "side wall" and the rib (172), being curved, can clearly be related to the meaning of a "curved central region" that is disposed centrally between the two side walls (170). The examiner agrees that the region (170) of ALBRECHT et al. is a flat region; however, there is nothing precluding the flat regions (170) of ALBRECHT et al. from being "side walls", especially with regard to being "side walls" to

the centrally curved portion (172). In no way does the definition of "side walls" exclude flat regions.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the central curved region not being a flat region with a stiffening notch) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Regarding the applicant's argument that ALBRECHT et al. includes a flat central region and not a curved central region, the applicant's attention is directed to figure 20 of ALBRECHT et al.; wherein, ALBRECHT et al. clearly shows a curved central portion (172).

In reference to the applicant's argument that the examiner is interpreting ALBRECHT et al. more broadly than even the inventor ALBRECHT et al. contemplated, without a detailed affidavit from ALBRECHT et al. himself supporting such an accusation, the argument is moot.

Regarding the examiner's consistency with the intention of ALBRECHT et al. and the language of claim 1, surely, the stiffening rib is analogous to a centrally located curved portion; wherein the curved portion (172) is located centrally between two side portions (170).

In reference to the applicant's argument that the examiner has not presented a Prima Facie Case of Obviousness due to the exclusion of a claimed element from the prior art references of ALBRECHT et al. and BLAZLEY, as mentioned twice before and

Art Unit: 3635

as indicated in the rejections as noted above, both ALBRECHT et al. and BLAZLEY disclose and detail each and every element of the invention as claimed.

With specific regard to the side walls of BLAZLEY not extending from opposite ends of the central curved portion, again and interpreted broadly, the side walls (S) or as at (70,71) in BLAZLEY surely extend from the opposite ends of the central curved portion (C).

Regarding the applicant's argument that BLAZLEY details a flat region with a stiffening rib, no where does BLAZLEY detail a flat region with a stiffening rib; rather, he details an array of elements or strips having flanges. At most, BLAZLEY details transverse ribs forming corrugations and having overlapping flanges. Hence, the argument regarding flat regions having ribs is rendered moot.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the orientation of the "ribs" with regard to cross section of the building, or the orientation of the "ribs" in general) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. In further regards to the applicant's argument of the "rib" orientation, it is not clear how the applicant can argue "rib" orientation that is not rendered by either ALBRECHT et al. or BLAZLEY when the applicant contends that his invention is not directed to a "rib"? Hence, the so called "rib" orientation is also rendered moot.

In reference to the applicant's argument that neither ALBRECHT et al. or BLAZLEY establish Prima Facie cases of obviousness with regard to claims 4-11, 18 and 19, because they both only show and "objective" teaching without the support of a modifying reference, surely, the arc in degrees and the radius of the arc in inches, is commonly known in the art for determining the desired or required rigidity/strength and aesthetic appearance of the panel itself. Although ALBRECHT et al. is silent in this regard, BLAZLEY briefly discusses the arc depths and thickness. The examiner agrees that neither reference discloses the specific arc degrees or length of the arc radius; however, the examiner contends that these are art recognized design matters which requirements are governed and are contingent upon the intended use of the building member. Further, due to the general nature and skill of a worker in this art, these general design features are well within their skill and capability of defining with regard to the individual situations without the positive support of a reference specific to the detailed teaching.

In response to applicant's argument that ALBRECHT et al. and BLAZLEY are is nonanalogous or irrelevant art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. In this case, and as noted above, clearly both ALBRECHT et al. and BLAZLEY, disclose building panels having a curved central portion, with side walls at opposing ends thereof and a pair of wings extending from the side walls.

Art Unit: 3635

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Examiner
Art Unit 3635

YMH
January 27, 2005

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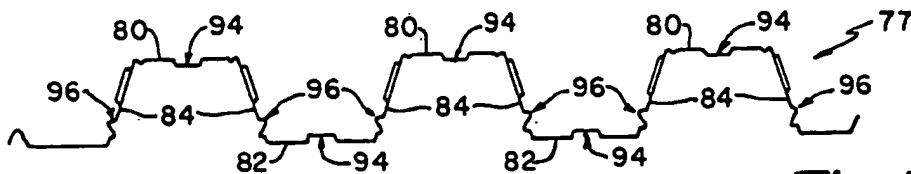


Fig. 18

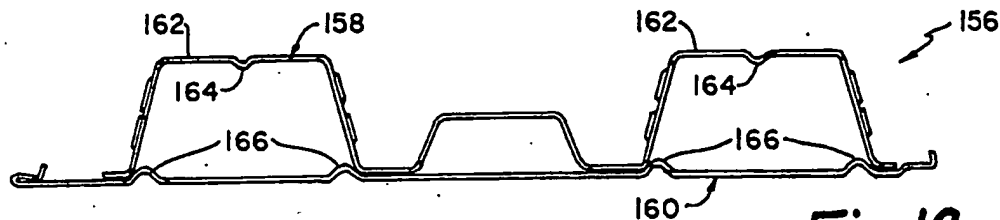


Fig. 19

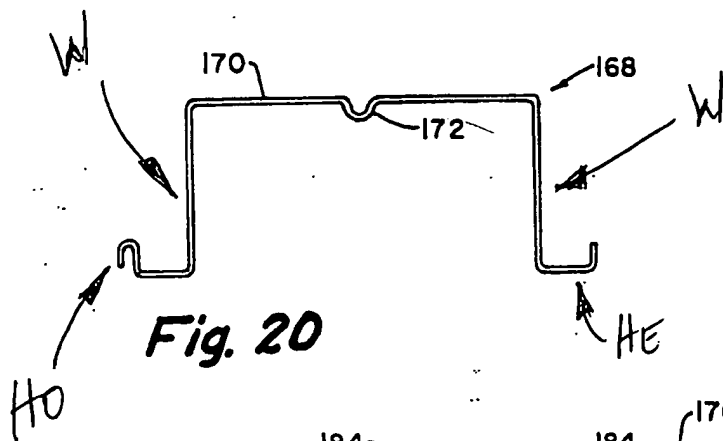


Fig. 20

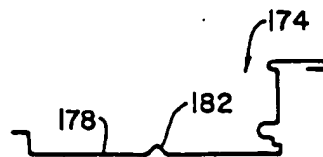


Fig. 21

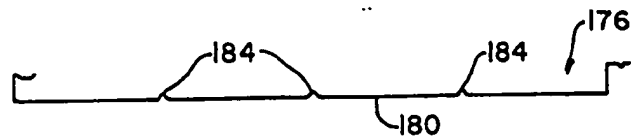


Fig. 22

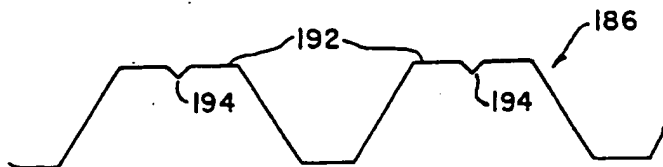


Fig. 23

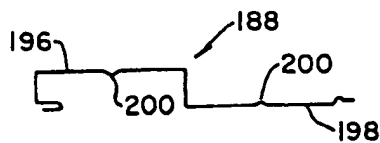
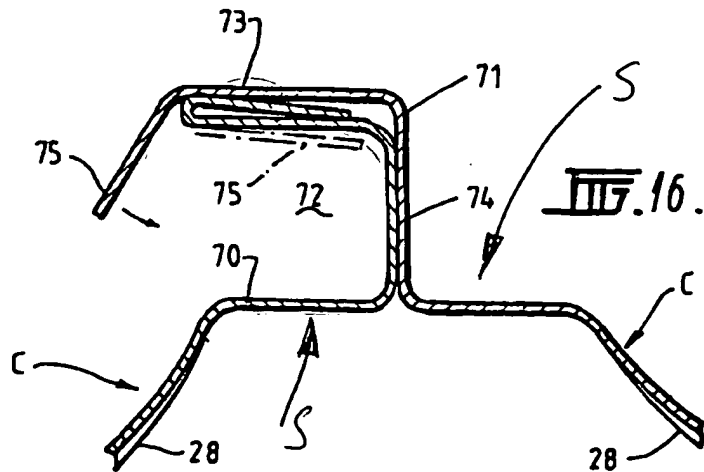
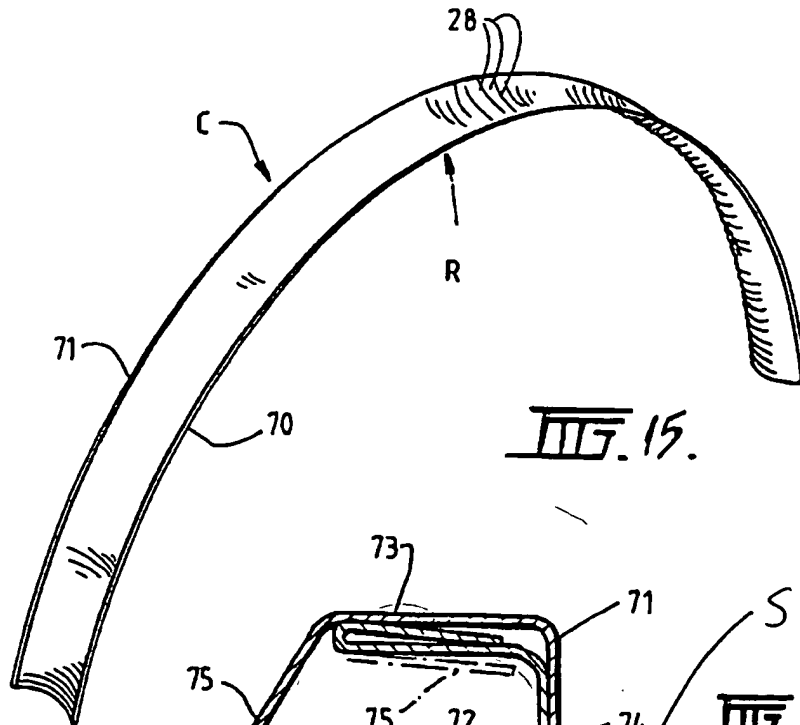
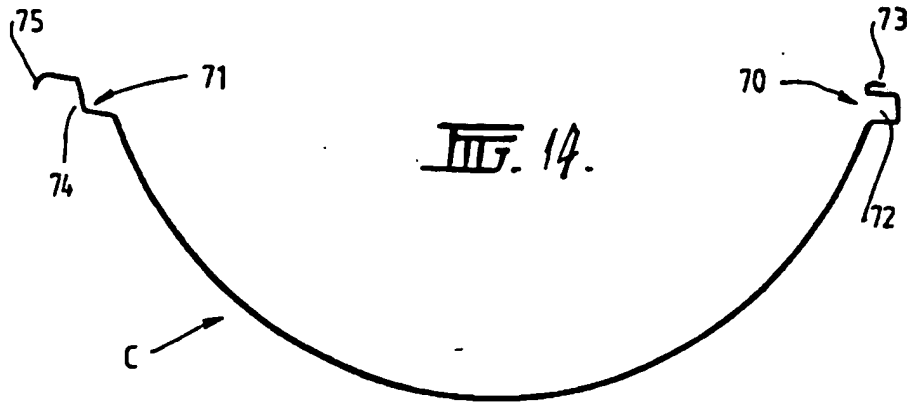


Fig. 24



Fig. 25



EXAMINER'S ATTACHMENT



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Meaning of SIDEWALL

WordNet Dictionary

Definition: 1. [n] a wall that forms the side of a structure
2. [n] the side of an automobile tire; "the car had white sidewalls"

Websites: Ads by Goooooogle

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